

FILED

AUG 16 2007

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

POSTED ON THE WEBSITE
NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 07-24447-D-11
CHAREL WINSTON,) Docket Control No. SW-1
Debtor.) DATE: August 15, 2007
TIME: 10:00 a.m.

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION ON
GMAC'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

I. BACKGROUND

On June 13, 2007 Charel Winston (the "debtor") initiated the above Chapter 11 case. No trustee has been appointed and the debtor is managing her financial affairs as a debtor-in-possession. In her voluntary petition the debtor listed two prior cases that she had filed within the last eight years. Specifically, the debtor listed Case No. 06-25276-D-13L filed December 12, 2006 (the "first case") and Case No. 07-20593-D-13L filed January 30, 2007 (the "second case").¹ The first case and the second case were

¹ The debtor's two prior bankruptcy cases were filed in the United States Bankruptcy Court, Eastern District of California. The court takes judicial notice of the docket and all pleadings filed in the first case and the second case.

1 pending and dismissed within one year of the debtor's current
2 Chapter 11.

3 On July 31, 2007 General Motors Acceptance Corporation
4 ("GMAC") filed a Motion for Relief From the Automatic Stay, bearing
5 Docket Control No. SW-1 (the "Motion"). The Motion requests that
6 GMAC be relieved from the automatic stay to allow GMAC to repossess
7 and dispose of a 2005 Hummer automobile that GMAC leased to the
8 debtor.

9 On August 14, 2007 the debtor filed opposition (the
10 "Opposition") to the Motion. In the Opposition the debtor asserts
11 she should: (1) be given an opportunity to submit a reorganization
12 plan; (2) that she has a high likelihood of reorganizing her debt;
13 (3) that the vehicle is necessary for reorganization; and (4) that
14 she has acted in good faith in this Chapter 11 case. On August 15,
15 2007 the court held a hearing on the Motion and the matter was
16 taken under submission.

17 18 II. ANALYSIS

19 A. Jurisdiction

20 This court has jurisdiction over the Motion pursuant to 28
21 U.S.C. sections 1334 and 157(b)(1). The Motion is a core
22 proceeding under 28 U.S.C. section 157 (b)(2)(G).

23 B. Legal Standard

24 Section 362(c)(4) of the Bankruptcy Code ("Code") provides in
25 part as follows:

26 " (A) (i) if a single or joint case is filed by or
27 against a debtor who is an individual under this title,
28 and if 2 or more single or joint cases of the debtor
were pending within the previous year but were
dismissed, other than a case refiled under section

1 707(b), the stay under subsection (a) shall not go into
2 effect upon the filing of the later case; and

3 (ii) on request of a party in interest,
4 the court shall promptly enter an order confirming that
no stay is in effect;

5 (B) if, within 30 days after the filing of the
6 later case, a party in interest requests the court may
7 order the stay to take effect in the case as to any or
8 all creditors (subject to such conditions or limitations
9 as the court may impose), after notice and a hearing,
only if the party in interest demonstrates that the
filing of the later case is in good faith as to the
creditors to be stayed;"

10 C. Discussion

11 Both GMAC and the debtor miss the mark. The debtor had two
12 prior bankruptcy cases pending within the year preceding the filing
13 of her current Chapter 11 case, and both cases were dismissed. The
14 first case was filed on December 12, 2006, and the debtor failed to
15 file the information required by section 521(a)(1) of the Code
16 within 45 days of the petition date. Accordingly, the first case
17 was automatically dismissed pursuant to section 521(i) of the Code
18 on the 46th day. An order confirming the automatic dismissal of
19 the first case was entered on February 5, 2007 (Docket Entry No. 19
20 in the first case).


21 The second case was filed on January 30, 2007 and dismissed on
22 June 6, 2007 as a result of debtor's failure to obtain pre-petition
23 credit counseling as required by section 109(h) of the Code (Docket
24 Entry No. 64 in the second case). None of the debtor's three
25 bankruptcy cases (the first case, the second case, or the current
26 Chapter 11) represent a refiled case under section 707(b) of the
27 Code.

28 / / /

1 The debtor's current Chapter 11 is more than 30 days old and
2 no party in interest has requested that the automatic stay take
3 effect. Accordingly, pursuant to section 362(c)(4) of the Code,
4 the stay under section 362(a) did not go into effect upon the
5 filing of the debtor's current Chapter 11. Further, the time has
6 run for a party to request the stay go into effect under section
7 362(c)(4)(B). As there is no stay in effect, the Motion will be
8 denied as moot.

9 A separate order will be entered consistent with this
10 memorandum decision.

11 Dated: AUG 16 2007


Robert S. Bardwil
United States Bankruptcy Judge

CERTIFICATE OF MAILING

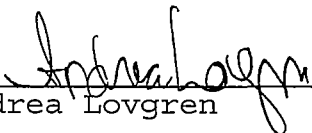
I, Andrea Lovgren, in the performance of my duties as assistant to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

Office of the United States Trustee
501 "I" Street, Suite 7-500
Sacramento, CA 95814

Charel Winston
2000 Arroyo Vista Way
El Dorado Hills, CA 95762

Donald Cram
Severson & Werson
One Embarcadero Center, Suite 2600
San Francisco, CA 94111

DATE: AUG 16 2007



Andrea Lovgren